



Paper No. 8

SCHERING-PLOUGH CORPORATION
PATENT DEPARTMENT (K-6-1, 1990)
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OFFICE OF PETITIONS

In re Application of
SERGIO A. LIRA
Application No. 09/780,724
Filed: February 9, 2001
Attorney Docket No. JB01066Q

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: DECISION GRANTING
: PETITION
:
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This is a decision on the petition filed December 9, 2002, requesting that the above-identified application be accorded a filing date of February 9, 2001.

On February 9, 2001, applicant filed the above-identified application. However, on October 18, 2002, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application," requiring drawings of applicant's invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on February 9, 2001, describes a drawing containing Figure 1A-C; however, it appears the United States Patent and Trademark Office (Office) did not receive any drawings.

In response, applicant filed the present petition, and paid the petition fee. Applicant admits that the application was deposited without drawings. Applicant asserts that Figure 1 was not necessary for an understanding of the invention, and therefore, was not necessary under 35 U.S.C. 113. Applicant states that a Preliminary Amendment requesting deletion of all references to Figure 1 in the specification is being filed concurrently with the present petition.

As stated in MPEP § 601.01(f), it is the practice of the Office to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the

specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" mailed October 18, 2002, was sent in error and is hereby vacated. The application is accorded a filing date of February 9, 2001.

Accordingly, the petition is granted.

No petition fee is necessary. The \$130.00 petition fee will be credited to Deposit Account No. 19-0365.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of February 9, 2001, indicating in the Office records that "0" sheets of drawings were present on filing, and for the mailing of a corrected filing receipt.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

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